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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. BRIAN EDWARD HARDY, Defendant and Appellant.	E061286 (Super.Ct.No. FWV1400504) OPINION

APPEAL from the Superior Court of San Bernardino County. Stanford E. Reichert, Judge. Affirmed.

Kenneth H. Nordin, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Andrew Mestman and Arlene A. Sevidal, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Brian Edward Hardy of one count of carrying a concealed dirk or dagger, as a felony. (Pen.Code[1] § 21310, count 1.)[2] Defendant admitted, and the trial court found true, the allegations that defendant suffered a prior strike conviction (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and a prior conviction that resulted in a prior prison term (§ 667.5, subd. (b)). On count 1, the trial court sentenced defendant to state prison for a term of seven years: a three-year upper term doubled because of the prior strike, with a one-year enhancement for the prior prison term.

Defendant argues on appeal: (1) that insufficient evidence supports his conviction on count 1; and (2) that he did not admit serving a prison term that would support his one-year enhancement, and no evidence was offered to show that he served such a prison term. We affirm the judgment.

FACTUAL BACKGROUND

On February 12, 2014, around 9:40 p.m., Officer Craig Ansman of the Ontario Police Department saw defendant standing against the wall of an alley in downtown Ontario. The officer was suspicious of defendant standing there at that time of night because the area recently had experienced incidents of vandalism and theft. The officer

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[1] All further statutory references are to the Penal Code unless otherwise noted.

[2] The jury also convicted defendant of one count of giving false information to a police officer (§ 148.9, subd.(a)) and one count of resisting or obstructing a police officer (§ 148, subd.(a)(1)). The trial court agreed to a terminal disposition on each of these counts and credited defendant with 226 days served. These counts form no part of defendant's contentions on appeal and so are not discussed.

shone the headlights of his marked patrol car on defendant and saw that he was wearing an outer garment, one the officer variously described as a "sweatshirt," a "shirt," or a "jacket." The officer exited his car, stood by the driver's side door, and asked defendant his name. The officer noticed that defendant's right hand was in the pocket of his outer garment. The officer asked defendant to take his hand out of his pocket, but defendant did not respond. Instead, defendant shuffled slowly toward the officer's car while keeping his right hand in the pocket of his garment. When defendant drew near the front bumper of the car, the officer radioed for support and drew his gun. Defendant then fled on foot with Officer Ansman and other officers in pursuit.

Officer Ansman lost sight of defendant, but eventually found him squatting inside the driveway entrance gate of a residential building under construction. The officer saw that defendant had taken off the same outer garment he had been wearing in the alley and had put it in his lap. The officer again drew his gun, ordering defendant to the ground; defendant again fled, dropping the garment. Using a nearby fence or gate, defendant then climbed to the second floor of the building, kicked down a pair of French doors, and hid in a stairway where Officer Ansman and other officers eventually found and arrested him.

After securing defendant, Officer Ansman walked back to where he had seen defendant squatting in the driveway. There, the officer found the same garment defendant had been wearing in the alley and holding in his lap. Inside the right front pocket of the garment, the officer found a folding knife locked in the open position. The officer estimated the folding knife had a three-inch blade. The blade could be opened or

closed by adjusting the position of a lever; the blade stayed locked in either position unless the operator adjusted the lever.

Prior to securing defendant, neither Officer Ansman nor any other officers touched the garment where the locked-open folding knife was found, and no pedestrians were in the area. The officer did not photograph the garment and did not remember what precisely he did with the garment after recovering it. The officer did not fingerprint the knife or test it for DNA. Neither Officer Ansman nor any other officers saw defendant holding the knife. It was later discovered that defendant had an outstanding arrest warrant at the time of the incident.[3]

DISCUSSION

Defendant argues that the evidence supporting his conviction is "speculat[ive]" for several reasons. First, defendant contends that no evidence linked him to possessing the folding knife, because no fingerprints or DNA samples were obtained from it and no officers saw him holding it. Defendant next contends that the jury could not have found that the garment recovered at the driveway gate with the folding knife in its pocket was the one that defendant had been wearing, because defendant was not arrested while wearing it; Officer Ansman was "inconsistent" in describing it; and the officer failed to photograph it or confiscate it as evidence; it could have belonged to someone else.

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[3] Another Ontario police officer, Officer Dave Reed, also testified for the People. However, Officer Ansman served as the People's primary witness, and Officer Reed's testimony largely corroborated Officer Ansman's testimony. Officer Reed's testimony thus merits no separate discussion.

Defendant thus concludes that the links in the chain of circumstantial evidenc**e** forged from the officer's testimony—the first one joining defendant to the garment, the second one joining the garment to the folding knife, and the final one joining the folding knife back to him—were too weak to support a rational finding of guilt beyond a reasonable doubt. We disagree.

When considering a challenge to the sufficiency of the evidence supporting a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains reasonable, solid, credible evidence from which a reasonable jury could find the defendant guilty beyond a reasonable doubt. (*People v. Johnson* (2015) 60 Cal.4th 966, 988.) We employ this same standard in evaluating both direct and circumstantial evidence. (*Ibid.*; *People v. Towler* (1982) 31 Cal.3d 105, 118-119.) We do not invade the province of the jury by reweighing the evidence, or by re-reconciling competing circumstances and redrawing competing inferences from those circumstances; it is the jury—not the appellate court—which must be convinced of the defendant's guilt beyond a reasonable doubt. (*People v. Alexander* (2010) 49 Cal.4th 846, 917; *People v. Bradford* (1997) 15 Cal.4th 1229, 1329.) Even the testimony of a single witness may provide the jury with sufficient evidence to support a conviction. (*People v. Elliott* (2012) 53 Cal.4th 535, 585.) To succeed under this review, then, a defendant bears the heavy burden of establishing that no reasonable jury could have found the defendant guilty beyond a reasonable doubt. (*People v. Lewis* (2009) 46 Cal.4th 1255, 1289-1290.)

To find defendant guilty of the charged offense, the People had to prove to the jury beyond a reasonable doubt: (1) that defendant carried on his person a dirk or dagger; (2) that the defendant knew that he was carrying it; (3) that it was substantially concealed on defendant's person; and (4) that defendant knew it could readily be used as a stabbing weapon. (*People v. Rubalcava* (2000) 23 Cal.4th 322, 332; CALCRIM No. 2501.) A folding knife qualifies as a dirk or dagger "only if the blade of the knife is exposed and locked into position" and is capable of inflicting "great bodily injury or death." (§ 16470; see CALCRIM No. 2501.)

Here, sufficient evidence supports the conviction. Although Officer Ansman was uncertain as to whether defendant's outer garment was a jacket, a sweatshirt, or something else entirely, the crucial point is that the officer testified that the garment he recovered with the folding knife in its right pocket was the same garment he had seen defendant wearing earlier in the alley. The officer further testified that defendant dropped this same garment when he was discovered squatting down in the driveway entrance. Although the garment could possibly have belonged to another person, based on the officer's testimony, the jury reasonably concluded that the garment belonged to and was worn by defendant throughout his encounter with the officer.

Also, the jury reasonably inferred from Officer Ansman's testimony that defendant possessed and knowingly carried the folding knife while it was substantially concealed on his person. The officer testified that he found the folding knife in the right front pocket of the same garment in which defendant had kept his right hand throughout

the earlier encounter in the alley; the officer could not see what defendant had in his pocket during that time. The officer further testified that defendant refused to remove his right hand from the front pocket of his garment—the same place where the folding knife was discovered—when asked to do so.

Finally, the jury reasonably found that the folding knife defendant carried was a dirk or dagger and that defendant knew it could readily be used as a stabbing weapon. Officer Ansman testified that the three-inch blade of the folding knife was found exposed in a locked-open position and that defendant would have had to adjust a lever to open or close the blade. Carrying a three-inch blade locked open ready for stabbing implies awareness of its lethality.

In sum, Officer Ansman's testimony alone provided the People with sufficient circumstantial evidence from which the jury could reasonably conclude that defendant, beyond a reasonable doubt, committed each element of the offense.

Concerning the prior prison term, the charging information read as follows: "It is further alleged as to count(s) 1 pursuant to Penal Code section 667.5[, subdivision] (b) that the defendant(s) Brian Edward Hardy, has suffered [a prior 2013 conviction under Health and Safety Code section 11377, subdivision (a)] and that a term was served as described in Penal Code section 667.5 for said offense(s), and that the defendant(s) did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term."

Defendant, through his attorney, waived formal arraignment on the information as well as advisement of his constitutional and statutory rights. Defendant also denied all priors.

Before closing arguments in defendant's jury trial on count 1, defendant waived his right to jury trial on the allegations of his prior convictions and was notified that they would instead be tried to the court. That same day, following the jury's conviction on count 1, defendant admitted both alleged prior convictions, but he did not expressly admit serving a prior prison term for the 2013 conviction. The pertinent part of the exchange ran as follows:

"THE COURT: And also admit that you had the prior conviction in [case No.] FSB1202259, a charge of Health and Safety Code section 11377(a), May 28, 2013. You're entitled to have a trial on this. Are you willing to waive that and enter an admission at this time?

"THE DEFENDANT: Yes.

"THE COURT: Counsel join?

"[DEFENSE COUNSEL]: Yes.

"THE COURT: So we have the priors admitted . . . ."

Defendant contends that, although he admitted the prior conviction, he did not admit that he served a prison term for that prior conviction, and the People offered no evidence to prove that he did. Relying first on *People v. Lopez* (1985) 163 Cal.App.3d 946 (*Lopez*) and *People v. Najera* (1972) 8 Cal.3d 504, defendant contends that his one-

year enhancement must either be stricken or, alternatively, reversed with retrial prohibited. Defendant so contends because he was not personally advised or otherwise made personally aware—because the information was not read to him, and his attorney entered the admission on his behalf—that admitting the fact of the prior conviction would also admit a prison term for that conviction, and because the People failed to timely object to the trial court's acceptance of defendant's "incomplete" admission.

A reviewing court considers the totality of the circumstances of the entire proceedings in determining whether a defendant has "voluntarily and intelligently" admitted serving a prior prison term by admitting a prior conviction. (*People v. Mosby* (2004) 33 Cal.4th 353, 356.) The allegations contained in the information comprise circumstances of key—indeed, often dispositive—importance in this analysis, for if the information alleges that a defendant served a prison term for a prior conviction, a defendant admits the prison term when he admits the prior conviction. (*People v. Cardenas* (1987) 192 Cal.App.3d 51, 61, citing *People v. Welge* (1980) 101 Cal.App.3d 616, 623-624; see also *People v. Ebner* (1966) 64 Cal.2d 297, 303 [noting that a defendant's admission of prior convictions "is not limited in scope to the fact of the convictions, but extends to all allegations concerning the felonies contained in the information"].) This rule is premised on the presumption that a defendant, absent evidence of a sanity issue or a lack of understanding, understands the allegations in the information and their implications when he admits them. (See *People v. Jackson* (1950) 36 Cal.2d 281, 287, and cases cited therein; see also *Ebner*, at p. 303, citing *Jackson.*)

Prior experience with the criminal justice system is also a relevant circumstance in this analysis. (*Mosby*, at p. 365, quoting *Parke v. Raley* (1992) 506 U.S. 20, 37].)

Here, the charging information alleged in clear, unambiguous language that defendant had served a prior prison term stemming from his 2013 conviction for possession of a controlled substance and that defendant had committed the offense within five years of release from the prior prison term. The record shows that, at his arraignment on the information, defendant through his attorney waived formal arraignment and advisement of his constitutional and statutory rights; no evidence in the record indicates that either defendant or his counsel failed to understand the contents of the information before waiving formal arraignment. The record further shows that defendant denied all priors at his arraignment, from which we may infer that he understood the consequences of admitting them. Defendant then underwent a jury trial on count 1. After his jury trial, and after again waiving his right to a trial on the prior convictions and prior prison term, defendant admitted the prior 2013 conviction. Moreover, this was not defendant's first experience with the California criminal justice system—he had at least the two prior convictions disclosed in the information. These circumstances support the conclusion that defendant voluntarily and intelligently admitted his prior conviction.

In sum, the totality of these circumstances show that defendant validly admitted the prior 2013 conviction. Under the rule of *Cardenas* and *Welge* (i.e., that a defendant admits a prior prison term by admitting a prior conviction alleged in the information to

have resulted in the prior prison term), defendant's valid admission to the prior 2013 conviction also served as a valid admission to the separate prior prison term resulting from that conviction.

Lopez does not apply because the charging document in *Lopez*, while alleging the defendant had suffered two prior convictions, failed to allege that the defendant had served *prior prison terms* resulting from those convictions. (*Lopez, supra*, 163 Cal.App.3d at p. 951.) On this ground the *Lopez* court distinguished its case from the general rule applied in *Welge* and later affirmed in *Cardenas*. (*Lopez*, at pp. 950-951 [distinguishing *Welge* by noting that "[a]lthough defendant admitted that the prior convictions were valid, he was not asked to and did not admit that he served a separate prison term for either of those prior convictions, and no evidence," such as prior prison allegations in the charging document, so established]). The same distinction applies to this case, in which service of the prior prison term was alleged in the information, and that distinction makes *Lopez* inapplicable to this case.

Defendant's contentions that he was not made personally aware of the allegations in the charging information do not make *Lopez* applicable—and the general rule of *Cardenas* and *Welge* inapplicable—to his case. We have found no authority, and defendant cites none, requiring that a defendant enter a waiver of formal arraignment *himself or herself* rather than through an attorney for that waiver to be valid. (See generally, 4 Witkin, Cal. Criminal Law 4th (2012) Pretrial, §§ 252-257, pp. 516-522

[nowhere discussing authority for the proposition that a defendant must personally waive formal arraignment for that waiver to be valid]).

Because we find that defendant properly admitted serving the prior prison term, we need not address defendant's alternative argument based on *Najera*, regarding the People's failure to timely object to his incomplete admission.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

KING
J.

MILLER
J.